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CGM
Mr. Barker

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-193323

DATE: January 31, 1980

MATTER OF: U.S. v. Garney White - [funding of judgment]

DIGEST: Cost of Farmers Home Administration (FmHA) compliance with court order to take all steps necessary to correct structural defects in house of rural home loan borrowers should be paid from funds appropriated to Department of Agriculture for administrative expenses of programs since order remedies situation created by FmHA's failure to perform duty under the program to service real estate security under authorization of title V of the Housing Act of 1949, as amended, 42 U.S.C. §§ 1471 et seq.. Order is not money judgment payable from the permanent indefinite appropriation established by 31 U.S.C. § 724a. FmHA may not use funds appropriated under 42 U.S.C. § 1479(c) because borrowers' house was completed before the time period covered by the after-enacted section.

This responds to a request by the Department of Justice that we advise the Department of Agriculture on the correct appropriation to charge the expenses of the Farmers Home Administration's compliance with an order of the United States District Court in U.S. v. White et ux., Civil No. WC 74-87-k (N.D. Miss.).

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The order, in part, requires the Farmers Home Administration (FmHA) to take the steps necessary to correct structural defects in the defendant, White's house. The order provides a remedy for injuries resulting from what the court found to be FmHA's failure to perform its duty under 42 U.S.C. § 1476(a) to service real property held as security for rural home loans.

Background

In March, 1971, the defendants, Mr. and Mrs. Garney White received a FmHA loan to buy a house then under construction. The FmHA made the loan under the authority of Title V of the Housing Act of 1949, (the Act) 42 U.S.C. §§ 1471 et seq. (1976). The Whites

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qualified for an interest credit authorized by section 503 of the Act when they received their loan. The credit reduced the Whites' monthly payments from \$98 to \$54.

The house was built with substantial defects and the Whites complained to the FmHA shortly after they moved in. The FmHA tried to get the builder to correct the problem. However, the Whites were not satisfied with the contractor's repair job, and they refused to make further payments on the loan. About four months later, FmHA officials determined that the Whites no longer qualified for the interest credit because Mrs. White had obtained a new job which increased the Whites' income. When Mr. White failed to bring his account current, as requested by FmHA officials, the FmHA foreclosed. The United States purchased the property at the foreclosure sale, and then brought an eviction action when the Whites refused to vacate the house.

Initially, the court of appeals affirmed a district court's summary judgment in favor of the United States. 536 F. 2d 1386 (5th Cir. 1976). However, on rehearing, the court of appeals remanded the case to the district court to consider whether the FmHA had violated any of the Whites' constitutional or statutory rights. 543 F. 2d 1139 (5th Cir. 1976).

On remand, the district court held that the foreclosure sale of the Whites' property violated their right to due process of law because they did not have a reasonable opportunity for a hearing prior to the sale. Accordingly, the court set aside the sale. 429 F. Supp. 1245 (N.D. Miss. 1977). The court also held that the Whites had federal and statutory rights by virtue of their eligibility for a rural home loan, and that they were entitled to assert them in a hearing before FmHA officials. The court stated that the Whites should be allowed to contest the factual basis for the FmHA's determination to cancel their interest credit, and to put forth their claim for a moratorium on loan and interest payments.

The court also found that the FmHA had a duty to see to it that the construction of the Whites' house was sound. The court said,

" * * * Furthermore, FmHA has the responsibility to service the real estate in a manner which will accomplish both the loan objectives as well as protect the government's financial interest. 7 CFR § 1872.1(b). This section also provides that

[t] o accomplish these purposes, the real estate security will be serviced in accordance with the security instruments and any related agreements . . . so long as the

borrower has reasonable prospects for accomplishing the loan objective, continues to make payments on the loan in accordance with his ability, properly maintains and accounts for the security, and otherwise meets the loan obligation in a satisfactory manner. Id. See also 42 U.S.C. § 1476(a)."

The court went in to state in a footnote:

"§ 1476(a) (1970) provides:

In connection with financial assistance authorized in this subchapter, the Secretary shall require that all new buildings and repairs financed under this subchapter shall be substantially constructed and in accordance with such building plans and specifications as may be required by the Secretary. Buildings and repairs constructed with funds advanced pursuant to this subchapter shall be supervised and inspected, as may be required by the Secretary, by competent employees of the Secretary. In addition to the financial assistance authorized in this subchapter, the Secretary is authorized to furnish, through such agencies as he may determine, to any person, including a person eligible for financial assistance under this subchapter, without charge or at such charges as the Secretary may determine, technical services such as building plans, specifications, construction supervision and inspection, and advise information regarding farm dwellings and other buildings.

Therefore, there was ample statutory authority for local FmHA officials to act to ensure that Whites' home was constructed in compliance with their contract."

Then the court stated:

"Obviously, meaningful consideration of the Whites' moratorium request would be intricately [sic] related to proper resolution of their assertion that FmHA had failed to meet its duty outlined in this regulation. We also are mindful that the objective of FmHA rural housing loans is "the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family. . . ." 42 U.S.C. § 1441. Moreover, FmHA is directed to exercise

"its powers, functions and duties with respect to housing . . . consistently with the national housing policy declared by this Act and in such manner as

will facilitate sustained progress in attaining the national housing objective hereby established." Id.

Finally, the district court concluded its opinion by stating,

"We hold further that the Whites shall be allowed an opportunity to present their several claims to local FmHA officials, upon appropriate notice, in a meaningful evidentiary hearing subject, if necessary, to full administrative review of any decision adverse to their interests."

On August 30, 1978, the district court issued an order which approved an FmHA report and recommendation, and resolved the issues in dispute, as stated by the court in its earlier opinion. The order provides:

"On motion of the United States of America for approval of report and recommendation for correction of structural defects in defendant's house and for the defendant to bring her principal balance due current and to increase her monthly payment to \$98 per month, it is

"ORDERED:

That the report and recommendation be and the same is hereby approved with the Farmers Home Administration to immediately take all steps necessary to correct said defects [sic] that the defendant, Margie White, bring her principal balance current and increase her monthly payment to \$98, said payments to commence upon the correction of all structural defects."

Thus, the White's interest credit was cancelled but the FmHA must take steps to assure that the structural defects in the house are corrected.

The Problem

The Department of Justice advises that no appeal will be taken from the court order. The sole issue is which appropriation to charge for the expenses incurred in repairing the White's house. The United States Attorney for the Northern District of Mississippi believes that the FmHA should pay the costs from funds appropriated to carry out 42 U.S.C. § 1479(c) of the Act.

The FmHA contends that it is not authorized under 42 U.S.C. § 1479(c) to pay the costs of carrying out the repair order because the Whites' house was completed before the date specified in the statute and because the section does not make an exception for court ordered repairs. It suggests instead that the permanent, indefinite appropriation for judgments (31 U.S.C. § 724(a)) be used. For the

reasons stated below, we believe the judgment fund appropriation is inappropriate to pay the expenses of carrying out the FmHA's responsibilities under the court order.

The appropriation contained in 31 U.S.C. § 724a is a permanent, indefinite appropriation established for the purpose of paying money judgments against the United States unless their payment is otherwise provided by law. The appropriation is not authorized to be used to fund administrative action required under a court order. In this case, the order cannot, by its terms, be satisfied by a payment of a sum of money to the Whites. Rather, the order requires the FmHA to "take all steps necessary" to correct defects in the White's house. This might include finding and hiring a competent contractor to do the work, as well as providing construction supervision, inspection, and advice. While the cost to FmHA is expected to be about \$600, this estimate does not transform the order into a money judgment within the scope of 31 U.S.C. § 724a.

We agree with FmHA, however, that 42 U.S.C. § 1479(c) does not provide the necessary authority to make the repairs required by the court order. Section 1479(c) provides:

"The Secretary is authorized, after October 1, 1977, with respect to any unit or dwelling newly constructed during the period beginning eighteen months prior to October 12, 1977, and purchased with financial assistance authorized by this subchapter which he finds to have structural defects to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property, if such assistance is requested by the owner of the property within eighteen months after financial assistance under this subchapter is rendered to the owner of the property or, in the case of property with respect to which assistance was made available within eighteen months prior to October 12, 1977, within eighteen months after October 12, 1977. Expenditures pursuant to this subsection may be paid from the Rural Housing Insurance Fund. Decisions by the Secretary regarding such expenditures or payments under this subsection, and the terms and conditions under which the same are approved or disapproved, shall not be subject to judicial review."

The Act was enacted on October 12, 1977. Thus, the statute authorizes repairs only to houses newly constructed, beginning April 12, 1976. The Whites' house was completed in the Spring of 1971, according to the district court, and, therefore, does not fall within the coverage of the provisions.

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However, the statutory period of applicability covers expenditures made under the authority of 42 U.S.C. § 1479(c). It does not apply where the FmHA is correcting defects on a house financed under the rural home loan program authorized under title V of the Housing Act of 1949, as amended, pursuant to a court order, as is the case here. FmHA can and should fund its expenses under the order from appropriations made for that program for fiscal year 1980 by the enactment of Pub. L. 96-108, 93 Stat. 821, 96th Cong., 1st Sess., (1979).

We wish to make it clear that although it was the FmHA's failure to perform its duties under 42 U.S.C. § 1476(a) which was the basis for the court's order, that section itself does not provide authority for the FmHA to pay for repairs to the White's house. As indicated above, subsection 1476(a) provides the Secretary with authority to supervise, inspect, and provide advice relating to buildings and repairs constructed under the rural home loan program. We are merely holding that, under the specific facts and circumstances of this case, funds appropriated to meet administrative expenses of the program may be used to comply with the court order because the necessity for expending these funds arose as a result of the Secretary's conduct of the rural home loan program.



For The Comptroller General
of the United States